

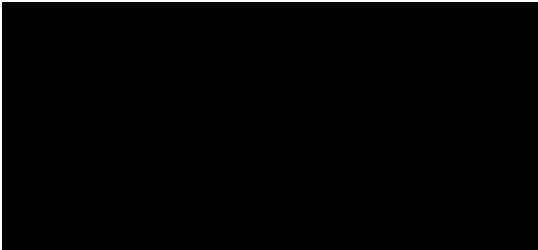
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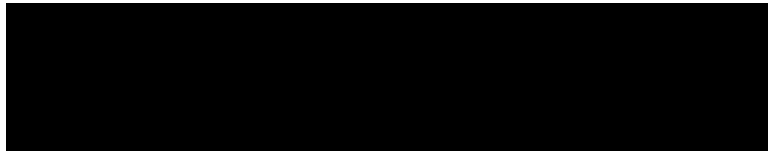


U.S. Citizenship
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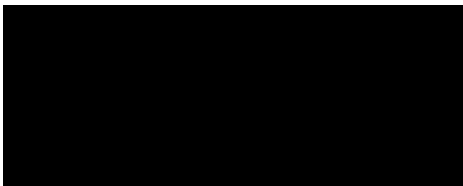
FILE: LIN 03 075 51366 Office: LINCOLN SERVICE CENTER Date: APR 07 2004

IN RE: Petitioner:
Beneficiary:



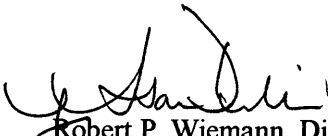
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an information technology firm that seeks to employ the beneficiary as a programmer analyst. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and two credentials evaluations for the beneficiary.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a programmer analyst. Counsel indicated in her October 17, 2002 letter that the petitioner requires that a candidate possess a bachelor's degree in computer information systems for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation.

On appeal, counsel submits two credentials evaluations: one from Dr. Edward Winchester and another from Educated Choices, LLC. With respect to the credentials evaluation from Dr. Edward Winchester of Thomas Edison State College, Trenton, New Jersey, counsel states that the evaluator found that the beneficiary has three years of formal university-level education and three years of professional experience in computer information systems; hence, the beneficiary possesses the equivalent of a U.S. bachelor's degree in the field of computer technology. The second credentials evaluation from David Sirota of Educated Choices, LLC., counsel states, concluded that the beneficiary has the equivalent of a U.S. bachelor's degree with a major in computer information systems.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in computer information systems. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSII);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

Counsel states that Dr. Edward Winchester is authorized to grant college level credit in the fields of computer science and computer information systems based upon a candidate's nonacademic training and experience. The evaluation from Dr. Winchester states:

Within the context of my professorial responsibilities and based upon my own academic and professional accomplishments, longevity, and qualifications I am authorized to grant college-level credit based upon a candidate's non-academic professional training and experience in the academic disciplines of [c]omputer [s]cience and [c]omputer [i]nformation [s]ystems.

Because Dr. Winchester submits no independent evidence that would corroborate he has such authority, the AAO finds that he does not qualify as an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Consequently, the evaluation carries little or no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

With respect to the educational evaluation from Educated Choices, LLC., a credentials evaluation service, the evaluation is based upon the beneficiary's education, training and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, this evaluation carries no weight in these proceedings. *Matter of Sea, id.*

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains an evaluation of the beneficiary's education from a third credentials evaluation service – Morningside Evaluations and Consulting, Inc. The evaluator, Professor Jonathan Jelen, found that the beneficiary's academic background and experience are the equivalent of a bachelor of science degree in computer information systems from an accredited institution of higher education in the United States. The record also contains a letter from Tom Milton, Chairperson, Division of Business & Accounting, Mercy College, New York. This letter stated that Professor Jelen reviews the professional and academic credentials of foreign applicants, students, and prospective faculty for the Division of Business and Accounting at Mercy College. The letter further stated that Dr. Jelen is experienced in evaluating business-related work experience of foreign students, determining their academic equivalence, and authorizing that credit be awarded by Mercy College.

Upon careful review of the record, the AAO finds that Dr. Jelen does not have authority to grant college-level credit for training and/or experience in the proffered position's specialty - computer information systems - at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. Dr. Jelen has authority to grant credit in the Division of Business and Accounting at Mercy College, and the division offers a program in Internet Business Systems. Dr. Jelen's authority, nonetheless, does not extend to the field of computer information systems, and the Internet Business Systems program differs fundamentally from a computer information systems program. As such, Dr. Jelen's evaluation carries little or no weight. *Matter of Sea, Inc., supra*. In addition, in order to meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the evaluation must be submitted on university letterhead to show that the evaluator is speaking on behalf of the university. Because Dr. Jelen's evaluation was done on behalf of an educational evaluation service, it cannot meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Again, an education evaluation service can evaluate education only. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

The record also contains two employment letters, one diploma in quality management along with transcripts, one computer-training certificate, and one degree - Bachelor of Science – along with transcripts from Andhra University. This documentation does not establish the equivalence of a baccalaureate degree in computer information systems. None of the beneficiary's courses at Andhra University are in the computer information systems field. The diploma from the National Centre for Quality Management does not indicate the length of training received, and the petitioner did not submit any independent evidence to illustrate the relevance of the diploma to the computer information systems field. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The AAO now considers the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. As described by each employer, the beneficiary's duties did not seem to involve the theoretical and practical application of business requirements analysis, GAP analysis, data migration, and customized implementation – areas that the petitioner claimed are required to perform the duties of proffered position. One employer states that the beneficiary was involved in the "training of Oracle Applications." Another employer merely states the beneficiary was employed as "Executive (Q.A.) in the Manufacturing Inspection Department." The January 27, 2003 letter from KPIT Infosystems Ltd. stated that the beneficiary has been an employee of the company since October 1999 as a programmer analyst "working on a range of IT projects using Oracle applications."

All three employers describe the beneficiary's duties generically; no specificity as to the beneficiary's daily activities or his level of responsibility is provided. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is business requirements analysis, GAP analysis, data migration, and customized implementation. Furthermore, none of the employers indicate that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Although the evaluation from Educated Choices, LLC delineates the beneficiary's experience with KPIT Infosystems Limited, there is no independent evidence in the record to confirm the job description. *Matter of Treasure Craft of California, supra*.

Finally, there is insufficient evidence that would show that the beneficiary has recognition of expertise. The AAO notes that the evaluator from Morningside Evaluations and Consulting cannot be considered a "recognized authority" because the evaluator is not qualified as an expert in the computer information systems field. Dr. Winchester also cannot be considered a "recognized authority" because he did not provide his qualifications as an expert; no resume or other evidence was attached to the evaluation. Finally, the evaluator from Educated Choices, LLC does seem to be a "recognized authority" based on his experience as a faculty advisor with New York University. However, as previously discussed, the evaluator's credentials evaluation carries no weight in these proceedings.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.